

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

THU T PHAM, HOANG NGO,

Plaintiffs,

vs.

CHARGER LOGISTICS USA INC.,
JOHN DOE, SINAN MUNTASEER
TOMA,

Defendants.

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SA-22-CV-01345-JKP

ORDER

Before the Court in the above-styled cause of action is Defendant Charger Logistics USA, Inc.’s Motion for Leave to Designate Humberto Barrera and/or John Doe as Responsible Third Parties [#29]. By its motion, Defendant Charger Logistics (“Charger”) asks the Court for permission to designate Humberto Barrera and John Doe as responsible third parties under Section 33.004(a) of the Texas Civil Practices and Remedies Code. The Court will grant the motion.

This suit arises out of a personal injury occurring on February 14, 2021, when Plaintiffs were in a motor-vehicle collision with a commercial tractor trailer operated by Mr. Toma in the course and scope of his employment with Charger Logistics USA, Inc. Charger argues that an individual named Humberto Barrera lost control of his car and crossed lanes of traffic colliding with Plaintiff’s vehicle and causing the accident at issue. Charger further asserts that, to the extent Barrera asserts that an unknown criminal John Doe rear-ended Barrera and caused him to lose control of his vehicle, then Doe is also a proximate cause of this accident and should be designated a responsible third party.

Under Section 33.011 of the Texas Civil Practice and Remedies Code, a “responsible third party” is defined as “any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.” Tex. Civ. Prac. & Rem. Code § 33.011(6). Texas Civil Practice and Remedies Code section 33.004 provides, in relevant part:

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date. . . .

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served. . . .

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

(1) does not by itself impose liability on the person; and

(2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

Id. at § 33.004. If a court grants a motion for leave to designate a person as a responsible third party pursuant to section 33.004(h), the person is designated as a responsible third party for purposes of chapter 33 (including submission to the jury under section 33.0031) without further action by the court or any party.

Defendant has timely filed its motion for leave to designate responsible third parties under the deadline established by the Texas statute and by this Court’s Scheduling Order. Any

response in opposition to the motion was due on or before May 31, 2023. Tex. Civ. Prac. & Rem. Code § 33.004(f). Plaintiffs have not filed a response in opposition to the motion. Thus, according to section 33.004(f), the motion should be granted because more than fifteen days since the filing of Charger's motion has elapsed without opposition from Plaintiffs. But even if this procedural aspect of the rule does not apply in federal court, this Court's Local Rules permit the granting of a non-dispositive motion as unopposed if there is no timely response to the motion filed. *See* W.D. Tex. Loc. R. CV-7(d). Because the seven-day deadline of Local Rule CV-(d) has also expired, the Court will grant Defendant's motion as unopposed.

IT IS THEREFORE ORDERED that Defendant Charger Logistics USA, Inc.'s Motion for Leave to Designate Humberto Barrera and/or John Doe as Responsible Third Parties [#29] is **GRANTED**.

IT IS FURTHER ORDERED that Humberto Barrera and John Doe are hereby designated as responsible third parties in this suit.

IT IS SO ORDERED.

SIGNED this 5th day of June, 2023.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE